NEO KIM SOON (PENTADBIR KEPADA HARTA PUSAKA PHANNA MANNEECHUANG, SIMATI)

v.

SUBRAMANIAN A/L RAMANAIDU & ANOR.

COURT OF APPEAL, KUALA LUMPUR
DATO' MAHADEV SHANKAR JCA
DATO' V.C GEORGE JCA
DATO' HJ. ABDUL MALEK BIN HJ. AHMAD J
[CIVIL APPEAL NO: J-04-55-94]
2 AUGUST 1995

DAMAGES: *Fatal accident - Negligence - Death of wife - Loss of service - Claim by husband and infant son for expenditure spent on housekeeper - Whether recoverable - Whether barred by s. 7(3) Civil Law Act 1956 - Section 7(3) - Amendment thereto - Effect - Whether claimant must show actual dependency of receiving financial contribution from the deceased - Whether Court could compensate for any reasonable expenses incurred as a result of the wrongful act - Civil Law Act 1956 s. 7(3)(ii) & (iii) - Act A602 of 1984.*

WORDS & PHRASES: *"Together" - Section 7(3) Civil Law Act 1956 - Whether to be read to mean that claim for reasonable expenses could not be sustained without evidence of monetary loss.*

On 1 May 1986 one Phanna Maneechuang (the deceased) was killed when the bus she was travelling in met with an accident near Ayer Hitam, Johore. The accident was caused solely by the negligence of the bus driver, the first defendant. The plaintiff, the deceased's husband, brought a suit under s. 7 Civil Law Act 1956, in his capacity as the husband and administrator of the deceased's estate and also on behalf of their infant son. Before the Sessions Court, the plaintiff alleged that by reason of the deceased's death he had to employ and would have to continue to employ a housekeeper for RM500 a month to look after the son. The Sessions Judge allowed the claim and found that a monthly expenditure of RM250 was reasonable for a period of 11½ years. On appeal, this decision was overturned by the High Court. Hence the further appeal by the plaintiff.

Before the Court of Appeal the defendant argued that the claim was not recoverable by reason of the amendment to s. 7(3) Civil Law Act by Act A602 of 1984. According to the defendant, by the said amendment, no award could be made by reason of the deprivation of the service or society of the wife, unless the claimant could show actual dependence in the sense of receiving financial contribution from the deceased. It was submitted that since the deceased did not make any financial contribution to the upkeep of her husband or son, the money expended by the plaintiff for the housekeeper was

really in lieu of the services which the deceased had provided, and was therefore irrecoverable. It was further submitted that since the claim herein is for a housekeeper's wages, and therefore was a personal loss suffered by the plaintiff and his son, they had to sue independently in their personal capacity, in which case the plaintiff would have had to describe himself as the father and the next of friend of his son in the title to the action.

Held:

Per Mahadev Shankar JCA (delivering the judgment of the Court):

[1] Here the plaintiff was making the claim both for himself and for his son. He was not claiming for the equivalent monetary value of the services provided by the deceased, but the actual monetary expense he had paid to the housekeeper, and would have to continue to pay the housekeeper, to look after his baby for 11½ years from the date of the accident.

[2] What has been done away with by proviso (iii) of the amended s. 7(3) is an award of damages, in this case to the deceased's husband, **only** on the ground that he has been deprived of the services or society of his wife. Thus, so far as a surviving husband is concerned, the proviso has abolished any award by way of general damages for loss of consortium. It is, however, a different matter altogether where a husband, as happened here, has not only lost his wife, but has also been put to monetary loss by the direct result of the negligence. Such loss continues to be recoverable. Clearly, s. 7(3) not only empowers the Court to compensate the claimant for any "loss of support" but also for "any reasonable expenses incurred as a result of the wrongful act." The word "together" in section s. 7(3), for that matter, cannot be read as giving the meaning that unless monetary loss is first shown by way of loss of support the claim for reasonable expenses cannot be sustained.

[3] Although s. 7(1) & (2) refers to the action by the personal representative as a representative action brought for the benefit of the relevant individuals, s. 7(3) has clearly enlarged the scope of the damages which may be awarded by allowing recovery in the same action all quantifiable loss directly caused by the wrongdoer and suffered by the persons for whose benefit the action has been brought. The presence of proviso (ii) which specifically makes funeral expenses also recoverable in the same action reinforces this view.

[4] It follows that wherever it can be shown whether by a parent, a surviving spouse or a child that actual quantifiable loss has been incurred in money or money's worth and will continue to be incurred as a direct result of

direct negligence of the wrongdoer, such loss will be recoverable even if there was no direct financial contribution made by the deceased to or on behalf of the person for whose benefit the action was brought.

[Appeal allowed. Judgment of Sessions Judge reinstated]

***[Bahasa Malaysia** Translation of Headnotes]*

***GANTIRUGI:** Kemalangan maut - Kecuaian - Kematian isteri - Kehilangan perkhidmatan - Tuntutan oleh suami dan anak lelaki untuk perbelanjaan yang dibelanjakan bagi pembantu rumah - Samada boleh didapatkan semula - Samada terhalang oleh s. 7(3) Akta Undang-Undang Sivil 1956 - Seksyen 7(3) - Pindaan keatasnya - Kesan - Samada pihak menuntut mesti menunjukkan tanggungan sebenar menerima sumbangan kewangan daripada si mati - Samada Mahkamah boleh menggantirugi bagi apa-apa perbelanjaan wajar yang dialami akibat perbuatan yang menyalahi itu - Akta Undang-Undang Sivil 1956 s. 7(3)(ii) & (iii) - Akta A602 Tahun 1984.*

***PERKATAAN-PERKATAAN & UNGKAPAN:** "Together" (berserta) - Seksyen 7(3) Akta Undang-Undang Sivil 1956 - Samada hendaklah dibaca bagi memberi maksud bahawa tuntutan untuk perbelanjaan yang wajar tidak boleh dibenarkan tanpa keterangan mengenai kerugian kewangan.*

Pada 1 Mei 1986 seorang yang bernama Phanna Maneechuang (simati) telah terbunuh bilamana bas yang beliau naiki menemui kemalangan berdekatan Ayer Hitam, Johor. Kemalangan tersebut disebabkan semata-mata oleh kecuaian pemandu bas, yang merupakan defendan pertama. Plaintif, suami simati, telah memulakan guaman di bawah s. 7 Akta Undang-Undang Sivil 1956, dalam kedudukannya sebagai suami dan pentadbir bagi harta pesaka si mati dan juga bagi pihak anak lelaki mereka yang masih belum dewasa. Dihadapan Mahkamah Sesyen, plaintif mengatakan bahawa disebabkan oleh kematian simati beliau terpaksa mengambil untuk bekerja dan akan terpaksa terus mengambil seorang pembantu rumah dengan upah sebanyak RM500 sebulan untuk menjaga anak lelaki tersebut. Hakim Mahkamah Sesyen telah membenarkan tuntutan tersebut dan mendapati bahawa perbelanjaan bulanan sebanyak RM250 adalah wajar bagi tempoh 11½ tahun. Atas rayuan, keputusan ini telah digugurkan oleh Mahkamah Tinggi. Ini mengakibatkan rayuan yang seterusnya oleh plaintif.

Dihadapan Mahkamah Rayuan, defendan berhujah bahawa tuntutan tersebut tidak harus berjaya disebabkan pindaan kepada s. 7(3) Akta Undang-Undang Sivil melalui Akta A602 Tahun 1984. Menurut defendan, melalui pindaan tersebut, tiada award boleh dibuat disebabkan oleh perlucutan perkhidmatan atau pergaulan dengan isteri kecuali pihak menuntut dapat menunjukkan tanggungan yang sebenarnya di segi penerimaan sumbangan kewangan daripada si mati. Adalah dihujahkan bahawa oleh kerana si mati tidak membuat apa-apa

sumbangan kewangan bagi tujuan penyelenggaraan suami atau anak lelakinya, maka wang yang dibelanjakan oleh plaintif untuk pembantu rumah tersebut adalah sesungguhnya sebagai ganti bagi perkhidmatan yang telah plaintif berikan dan adalah dengan itu tidak boleh didapati kembali. Adalah dihujahkan seterusnya bahawa oleh kerana tuntutan di sini adalah untuk gaji pembantu rumah, dan dengan itu merupakan kerugian sendiri yang dialami oleh plaintif serta anak lelakinya, mereka haruslah mendakwa secara bebas dalam kedudukan mereka yang tersendiri, dalam keadaan yang mana plaintif terpaksa menerangkan dirinya sebagai bapa dan rakan bagi anak lelakinya dalam tajuk tindakan tersebut.

Diputuskan:

Oleh Mahadev Shankar HMR (menyampaikan penghakiman Mahkamah):

[1] Di sini plaintif telah membuat tuntutan bagi kedua-duanya iaitu bagi dirinya sendiri dan untuk anak lelakinya. Beliau tidak menuntut bagi nilai wang yang bersamaan dengan perkhidmatan yang diberikan oleh simati, tetapi perbelanjaan wang sebenarnya yang telah beliau bayarkan kepada pembantu rumah tersebut, dan terpaksa terus bayar kepada pembantu rumah tersebut bagi menjaga anak kecilnya selama 11½ tahun daripada tarikh kemalangan tersebut.

[2] Apa yang telah diketepikan oleh proviso (iii) dari s. 7(3) yang terpinda adalah award gantirugi, dalam keadaan ini kepada suami simati, **hanya** atas alasan bahawa beliau telah terlucut daripada menerima perkhidmatan atau berdampingan dengan isteri beliau. Dengan itu, sejauhmana ianya berkaitan dengan suami yang masih hidup, proviso tersebut telah menghapuskan apa-apa award melalui gantirugi am kerana kehilangan pergaulan bersama isterinya. Ianya walaubagaimanapun suatu perkara yang berbeza sama sekali, di mana seorang suami, sepertimana yang berlaku di sini, bukan sahaja telah kehilangan isterinya, tetapi telah juga kehilangan wang yang disebabkan secara terusnya oleh kecuaian. Kerugian yang sedemikian secara berterusan boleh diperolehi semula. Jelas, s. 7(3) bukan sahaja memberi kuasa kepada Mahkamah untuk memberikan pampasan kepada pihak menuntut bagi apa-apa "loss of support" (kehilangan tanggungan) tetapi juga bagi "any reasonable expenses incurred as a result of the wrongful act" (apa-apa perbelanjaan wajar yang dialami akibat perbuatan salah tersebut). Perkataan "together" (beserta) dalam s. 7(3), dalam keadaan itu, tidak boleh dibaca sebagai bermaksud bahawa kecuali kerugian wang ditunjukkan pertama kalinya melalui kehilangan tanggungan, tuntutan bagi perbelanjaan wajar tidak dapat dikekalkan.

[3] Walaupun s. 7(l) dan (2) merujuk kepada tindakan oleh wakil diri sebagai satu tindakan wakil yang telah dimulakan demi kepentingan individu-individu yang relevan, s. 7(3) telah dengan jelasnya meluaskan bidang gantirugi yang

mana boleh diawardkan dengan membenarkan perolehan semula dalam tindakan yang sama, kesemua kerugian yang boleh dihitung yang mana secara terus disebabkan oleh pesalah dan dialami oleh orang-orang bagi kepentingan siapa tindakan tersebut telah dimulakan. Kehadiran proviso (ii) yang mana secara khususnya menjadikan perbelanjaan pengkebumian juga boleh diperolehi semula dalam tindakan yang sama memperkukuhkan lagi pendapat ini.

[4] Adalah didapati bahawa di mana ianya boleh ditunjukkan samada oleh ibubapa, suami atau isteri yang masih hidup atau seorang anak bahawa kerugian yang boleh dihitung telah dialami dalam bentuk wang atau nilai wang dan akan terus dialami sebagai akibat secara terus kecuaian pesalah, kerugian yang sedemikian akan diperolehi semula walaupun tidak terdapat sumbangan kewangan secara terus yang telah dibuat oleh simati kepada atau bagi pihak orang untuk kepentingan siapa tindakan tersebut telah dimulakan.

[Rayuan dibenarkan. Penghakiman Hakim Sesyen dihidupkan semula].

Legislation referred to:
Civil Law Act 1956, s. 7(1), (2), (3)

For the appellant - Chok Chin You (L. Renganathan with him); M/s. Loh & Renga
For the respondents - D.C. Alfred; M/s. D.C Alfred & Co.

JUDGMENT

Mahadev Shankar JCA:

On 12 November 1984 Neo Kim Soon (the plaintiff) married Phanna Maneechuang (the deceased). He was then 63 years old. His wife (the deceased) was then aged 32. A son, Teemee Maneechuang was born to them on 6 August 1985.

On 1 May 1986 the deceased was a passenger in a bus which met with an accident near Air Hitam, Johore. The deceased was killed. The accident was caused solely by the negligence of the bus driver, the first defendant.

The plaintiff filed a suit in the Sessions Court at Kulai. The statement of claim specifically pleaded that this action which the plaintiff brought in his capacity as the administrator of the deceased's estate, was under s. 7 of the Civil Law Act 1956 and that it was brought on his own behalf as the lawful husband of the deceased and on behalf of his son.

At the trial the plaintiff gave evidence that by reason of the death of the deceased he had to employ and would have to continue to employ a housekeeper to look after his infant son at a monthly wage of RM500. The Sessions Court Judge found that a monthly expenditure of RM250 was reasonable for a period of 11½ years.

In the High Court, the learned Judge allowed the defendant's appeal. We reinstated the judgment of the Sessions Judge. Our reasons now follow.

The defendant's submission was that this claim was not recoverable by reason of the amendment to s. 7(3) of the Civil Law Act 1956 by Act A602 of 1984 (the said Amendment). Prior to the said Amendment s. 7(1) provided for the survival of the cause of action where the death of a person is caused by negligence, and s. 7(2), for the action to be brought by the personal representative of the deceased for the benefit of the surviving spouse, parent and child, and s. 7(3) stated:

> In every such action the Court may give damages as it thinks fit proportioned to the loss resulting from the death to the parties respectively for whom and for whose benefit the action is brought ...

Since the damage contemplated by these words was "the loss resulting from the death" such damage was not restricted to actual financial loss, and since the section required proportioning the damages, the section also contemplated that each of the persons for whose benefit the action was brought had an independent cause of action for his or her respective loss even though satisfaction was being provided in a single action.

The defendant then submitted that the said amendment had pruned the earlier remedy to the extent that unless the claimant could show actual dependency in the sense of receiving a financial contribution from the deceased, no award could be made by reason of the deprivation of the services or society of a wife. In the present case it was submitted that since the deceased did not make any financial contribution to the upkeep of her husband or son, the money expended by the plaintiff for a housekeeper was really *in lieu* of the services which the deceased had provided, and was therefore irrecoverable.

We need now to look at the new wording. Section 7(1) and (2) have not been altered. The old s. 7(3) was deleted altogether. In its place a new sub-section 7(3) was substituted. For the present it is sufficient to set out the words of the sub-section and proviso (ii) and (iii) which read as follows:

> The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1):
>
> Provided that -
>
> (ii) damages may be awarded in respect of the funeral expenses of the person deceased if such expenses have been incurred by the party for whose benefit the action is brought;

(iii) no damages shall be awarded to a parent on the ground **only** of his having been deprived of the services of a child; and no damages shall be awarded to a husband on the ground **only** of his having been deprived of the services or society of his wife; (Emphasis added).

Here the plaintiff was making the claim both for himself and for his son. He was not claiming for the equivalent monetary value of the services provided by the deceased but the actual monetary expense he had paid to the housekeeper and would have to continue to pay the housekeeper to look after this boy for 11½ years from the date of the accident.

We agree with Mr. Chok Chin You of Counsel for the plaintiff/appellant that what has been done away with by the *proviso* (iii) is an award of damages, in this case to the deceased's husband, **only** on the ground that he has been deprived of the services or society of his wife. So far as a surviving husband is concerned the proviso has abolished any award by way of general damages for loss of consortium. In other words proof of the death of a wife, without more, will not entitle the surviving husband to an award in damages.

It is a different matter altogether where a husband has not only lost his wife, but has also been put to monetary loss which has been the direct result of the negligence. Such loss in our view continues to be recoverable.

We say this because s. 7(3) as it is presently worded not only empowers the Court to compensate the claimant for any "loss of support" but also for "any reasonable expenses incurred as a result of the wrongful act". We cannot agree with respondents' Counsel that the word "together" in s. 7(3) must be read to mean that unless monetary loss is first shown by way of loss of support the claim for reasonable expenses cannot be sustained.

Since the claim for the housekeeper's wages, not being a claim for loss of support; was a personal loss suffered by the plaintiff and his son, it was also submitted that the plaintiff and the son had to sue independently in their personal capacity for this loss in which case the plaintiff would have had to describe himself as the father and the next friend of his son in the title to the action. With respect we do not think this can be right. Although s. 7(1) and (2) refers to the action by the personal representative as a representative action brought for the benefit of the relevant individuals, s. 7(3) has clearly enlarged the scope of the damages which may be awarded by allowing recovery in the same action all quantifiable loss directly caused by the wrongdoer and suffered by the persons for whose benefit the action has been brought. The presence of proviso (ii) which specifically makes funeral expenses also recoverable in the same action reinforces this view.

As a matter of interest we observe that proviso (iii) does not preclude damages to a child for having been deprived of the services or society of his mother but we do not think that it is necessary for this appeal to say anything more

about this except that it follows from what we have said that wherever it can be shown whether by a parent, a surviving spouse or a child that actual quantifiable loss has been incurred in money or money's worth and will continue to be incurred as a direct result of the negligence of the wrongdoer, such loss will be recoverable even if there was no direct financial contribution made by the deceased to or on behalf of the person for whose benefit the action was brought.

In the circumstances we also ordered that the defendant pay the appellant his taxed costs both here and in the Court below and for the deposit to be refunded to the appellant.